IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 145 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NILA CONSTRUCTION CO.

Appearance:

1. INCOME TAX REFERENCE No. 145 of 1993
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
Notice Served for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question has been referred for the opinion of this Court in respect of assessment year 1984-85 :-

"Whether the Appellate Tribunal is right in law and on facts in holding that the assessee is an industrial undertaking and thereby entitled to deduction under sec. 80HH of the I.T. Act ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue submits that since the assessee is a firm engaged in the construction activity, it cannot be said to be engaged in any manufacturing or production activity and is, therefore, not entitled to deduction under Section 80HH of the Act. The learned counsel heavily has relied on the decision of the Apex Court in CIT vs. N.C. Budharaja and Co., 204 ITR 412.

4. Having heard the learned counsel for the revenue and having gone through the aforesaid decision, we find that there is considerable substance in the submission made by the learned counsel for the revenue. We accordingly hold that the assessee, a firm engaged in construction activity cannot be said to be an industrial undertaking and is, therefore, not entitled to deduction under Section 80HH of the Act. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-